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7 **IN THE UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 WINDSONG CONDOMINIUM
11 ASSOCIATION, a Washington non-profit
12 corporation,

13 Plaintiff,

14 v.

15 ACE USA SPECIALTY CLAIMS, a
16 foreign corporation,

Defendant.

No.

COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES

JURY DEMANDED

17 This is an insurance coverage dispute involving damage to a condominium.
18 Defendant ACE USA Specialty Claims (“ACE”) breached its insurance contracts with
19 Plaintiff, unreasonably failed to respond to, investigate, or pay Plaintiff’s claim, and
20 damaged Plaintiff in an amount to be proven at trial – but currently believed to exceed, after
21 damages are trebled under RCW 48.30.015, at least \$2,800,000.

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23 **I. PARTIES, JURISDICTION, AND VENUE**

24 1. Plaintiff Windsong Condominium Association (“the Association”) is a non-
25 profit corporation organized and existing under the laws of the State of Washington. The
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1 Association is comprised of and represents the unit owners at Windsong Condominium, a
2 condominium located in Seattle, Washington.

3 2. The Association is an insured under several insurance policies issued by ACE
4 or its predecessors.

5 3. The Association has paid all fees and fulfilled all other conditions precedent
6 necessary to maintain this action.

7 4. ACE is, upon information and belief, an insurance company transacting
8 business in this judicial district.

9 5. ACE is a successor to CIGNA Fire Underwriters Insurance Company and
10 Bankers Standard Insurance Company, such that all amounts, duties, benefits, and
11 obligations owed to the Association by CIGNA Fire Underwriters Insurance Company or
12 Bankers Standard Insurance Company are owed by ACE.

13 6. The Association is a citizen of Washington.

14 7. On information and belief, ACE is incorporated in Pennsylvania, has its
15 principal place of business in Pennsylvania, and is therefore a citizen of Pennsylvania.

16 8. On information and belief, subject matter jurisdiction exists under
17 28 U.S.C. § 1332 in that this lawsuit involves citizens of different States and the amount in
18 controversy exceeds the sum of \$75,000, exclusive of interest and costs.

19 9. This Court has personal jurisdiction over ACE under the Washington Long
20 Arm Statute, RCW 4.28.185, in that ACE transacts business within Washington.

1 10. Venue is proper in this judicial district under 28 U.S.C § 1391(c) because
2 ACE is subject to personal jurisdiction in this judicial district at the time of commencement
3 of this action, and is therefore a resident of this judicial district.

4 **II. THE ACE POLICIES**

5 11. ACE, through its predecessors Bankers Standard Insurance Company and
6 CIGNA Fire Underwriters Insurance Company, issued several policies of property insurance
7 to the Association under Policy Number D17885315 (“the ACE Policies”). The ACE
8 Policies were in force for consecutive annual policy periods from May 18, 1990 through
9 May 18, 1993.
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11 **III. FACTUAL BACKGROUND**

12 12. In 2005, the Association discovered the existence of severe property damage
13 in the structure of the Windsong Condominium.

14 13. All the damage resulted from an “occurrence,” as that term is defined in the
15 ACE Policies, in that the damage resulted from an “accident, including continuous or
16 repeated exposure to the same event,” that caused *some* damage during the ACE Policies’
17 policy periods.
18

19 14. The ACE Policies cover *all* damage resulting from that occurrence, regardless
20 of whether part of the damage occurred outside the ACE Policies’ policy periods.

21 15. In November 2005, the Association informed ACE by letter of the damage to
22 the Windsong Condominium. The Association requested that ACE conduct a thorough
23 investigation of the damage, and provide all coverage afforded by the ACE Policies.
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25 16. ACE failed to promptly respond to the Association’s claim letter.
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1 17. ACE failed to promptly and thoroughly investigate the Association's claim.

2 18. ACE unreasonably refused to pay the Association's claim.

3 19. ACE failed to promptly provide the Association with a reasonable
4 explanation of the basis for ACE's refusal to pay the Association's claim.

5 20. On January 8, 2008, the Association sent ACE a letter providing notice that
6 the Association intended to assert a cause of action against ACE under RCW 48.30.015, and
7 providing notice of the bases for that cause of action. The Association also sent a copy of its
8 January 8, 2008 letter to the Washington Insurance Commissioner.

9 21. More than twenty days have elapsed since the date ACE received the
10 Association's notice letter, and ACE has failed to resolve the claim that is the subject of the
11 Association's RCW 48.30.015 cause of action.
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13 **IV. CAUSES OF ACTION**

14 22. The allegations of paragraphs 1-21 are re-alleged and incorporated herein by
15 reference.
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17 23. An actual controversy exists between the Association and ACE as to the
18 rights and obligations of the parties under the ACE Policies.

19 24. The Association is entitled to a declaration of the rights and obligations of the
20 parties, as well as the coverage afforded under the ACE Policies.
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22 25. The Association has complied with all applicable conditions precedent under
23 the ACE Policies that were not waived by ACE.

24 26. ACE had a contractual duty to pay covered claims.
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1 27. ACE breached that duty, proximately causing damage to the Association in
2 an amount to be proven at trial.

3 28. ACE's above-described conduct violates, among other regulations and
4 statutes, Washington Administrative Code ("WAC") sections 284-30-330(2); 284-30-330(3),
5 284-30-330(4); 284-30-330(13); 284-30-360(1); and 284-30-370.

6 29. ACE's violations of these WAC sections constitutes a violation of
7 Washington's Consumer Protection Act, RCW Chapter 19.86.

8 30. ACE's violation of the Washington's Consumer Protection Act has damaged
9 the Association in an amount to be proven at trial.

10 31. By unreasonably denying the Association's claim, and by violating the WAC
11 sections listed above, ACE violated RCW 48.30.015, damaging the Association in an
12 amount to be proven at trial.

13 32. ACE owed the Association a duty in tort to act reasonably and in good faith
14 in investigating and responding to the Association's claim. ACE breached those duties,
15 proximately causing damage to the Association in an amount to be proven at trial.

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18 **V. PRAYER FOR RELIEF**

19 WHEREFORE, the Association prays for the following relief:

- 20 1. A declaration establishing the rights and obligations of the parties;
- 21 2. All damages legally available for ACE's breaches of contract, violation of
- 22 Washington's Consumer Protection Act, violation of RCW 48.30.015, and bad faith;
- 23 3. An award of attorney's fees and other costs incurred by the Association and
- 24 recoverable under applicable statute or common law, including but not limited to
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1 RCW 48.30.015, RCW 19.86.090, and Olympic Steamship Co., Inc. v. Centennial Ins. Co.,
2 117 Wn.2d 37, 811 P.2d 673 (1991);

3 4. An award of treble damages, pursuant to RCW 48.30.015 and/or
4 RCW 19.86.090;

5 5. An award of prejudgment interest, to the extent allowed by law; and

6 6. Such other and further relief as this Court deems just and proper.

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8 **VI. JURY DEMAND**

9 Plaintiff hereby demands a trial by jury in accordance with Rule 38 of the Federal
10 Rules of Civil Procedure.

11 DATED this 1st day of February 2008.

12 HARPER | HAYES PLLC

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14 By: 

15 Todd C. Hayes, WSBA No. 26361
16 Gregory L. Harper, WSBA No. 27311
17 Michael J. Crisera, WSBA No. 30353
18 Attorneys for Plaintiff